

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 04-376
Table of Allotments,)	RM-11039
FM Broadcast Stations.)	
(Hutchinson and Haven, Kansas))	
)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: October 4, 2005**Released: October 6, 2005**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making*¹ issued in response to a Petition for Rule Making filed by Ad Astra per Aspera Broadcasting, Inc., ("Petitioner"), licensee of Station KSKU(FM), Channel 246C2, Hutchinson, Kansas, proposing the reallocation of Channel 246C2 to Haven, Kansas, and the modification of Station KSKU(FM)'s license accordingly.² Petitioner filed comments and a supplement in support of the proposal, reaffirming its intention to apply for the channel, if reallocated to Haven. No other pleadings were received.

2. Petitioner filed its reallocation request pursuant to Section 1.420(i) of the Commission's Rules,³ which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.⁴ Because Station KSKU(FM)'s proposed 70 dBu contour covers 86.1 percent of the Wichita, Kansas Urbanized Area, Petitioner has provided the required *Tuck* analysis.⁵ In support of its

¹ *Hutchinson and Haven, Kansas*, 19 FCC Rcd 18739 (MB 2004).

² On April 24, 2000, Station KSKU(FM) filed a one-step upgrade application (File No. BPH 20000424ABH) requesting the upgrade from Channel 246C3 to Channel 246C2 at Hutchinson, Kansas, and a construction permit was granted on October 12, 2001. Station KSKU(FM) subsequently filed an application (File No. BMPH 20021105AAC) to modify its construction permit. The staff subsequently dismissed this application on May 24, 2005, for failure to prosecute. The construction permit expired on October 12, 2004. Since an authorization to downgrade to a Class C3 facility and to modify the FM Table of Allotments has not been issued, we will reallocate Station KSKU(FM) to Haven, Kansas, as a Class C2 facility.

³ 47 C.F.R. § 1.420(i).

⁴ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

⁵ See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995); *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951) *RKO General, Inc. (KFRC)*, ("KFRC"), 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck ("Tuck")*, 3 FCC Rcd 5374 (1988). *KFRC* and *Tuck* clarified the type of evidence considered in determining whether a suburban community should be denied a first local service preference. The

proposal, Petitioner states that Haven is located over 25 miles from Wichita, in Reno County, and has a 2000 U.S. Census population of 1,175 persons. Haven has its own city government, with a city council, mayor and city administrator. Haven has its own post office and zip code. It also has its own police and fire departments, as well as parks and recreation department. Haven has a grade school, middle school, high school and public library. Haven is the home to over 50 businesses. The city provides electricity, water, sewer and refuse disposal services to the residences and businesses. The local news paper is published in nearby Mount Hope, a smaller city. *The Mount Hope Clarion* covers the local news of Haven and several smaller surrounding cities. The Haven telephone book also includes several of the nearby cities and surrounding rural areas; but does not include Wichita. Haven telephone numbers are not included with the Wichita metro telephone book. Haven provides its own government and community services, schools, and private manufacturing, retail, and service businesses.

3. We find that the Haven reallocation satisfies seven of the eight *Tuck* factors.⁶ Therefore, we deem it a sufficiently independent community, and therefore, deserving of a first local service preference. In considering a reallocation proposal, we compare the existing allocation to the proposed allocation to determine whether the reallocation will result in a preferential arrangement of allocations. This determination is based upon the FM allocation priorities.⁷ Specifically, the reallocation of Channel 246C2 to Haven would provide the community with its first local aural transmission service, triggering priority (3). On the other hand, the retention of Channel 246C2 at Hutchinson (population 40,787) would provide the community with its sixth local aural transmission service, triggering priority (4), other public interest matters.

4. Moreover, an engineering analysis has revealed that the reallocation would result in new service to a population of 509,204 persons encompassing an area of 4,974 square kilometers. We note that the reallocation would also result in a loss in service to 7,072 persons encompassing an area of 1,225 square kilometers, a net gain of 502,132 persons encompassing an area of 3,749 square kilometers. Both the gain and loss areas have five or more reception services, and thus, are considered to be well-served.

5. We believe the public interest would be served by reallocating Channel 246C2 to Haven, Kansas, as the community's first local aural transmission service, without depriving Hutchinson of its

Commission has stated that it will rely primarily on three criteria—signal population coverage, the size of the suburban community relative to the adjacent city, and the interdependence of the suburban community with the central city. The Commission considers the following factors in determining a community's interdependence with a central city: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether the community's leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the small community has its own telephone book or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, libraries. *Tuck*, 3 FCC Rcd at 5378.

⁶ Haven does not have its own local newspaper.

⁷ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The FM allocation priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

sole local service.⁸ An engineering analysis has determined that Channel 246C2 can be reallocated to Haven in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.9 kilometers (15.5 miles) southeast at Petitioner's requested site. The reference coordinates for Channel 246C2 at Haven are 37-47-47 North Latitude and 97-31-59 West Longitude. In accordance with Section 1.420(i) of the Commission's Rules, we will modify Station KSKU(FM) license to specify operation on Channel 242C2 at Haven, Kansas, as its new community of license.

6. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective November 20, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Hutchinson, Kansas	240A, 271C, 275C
Haven, Kansas	246C2

7. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Ad Astra per Aspera Broadcasting, Inc, Station KSKU(FM), Hutchinson, Kansas, IS MODIFIED to specify operation on Channel 246C2 at Haven, Kansas, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may not be conducted in accordance with 47 C.F.R. Section 73.1620; and.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

8. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l), Ad Astra per Aspera Broadcasting, Inc., licensee of Station KSKU(FM), is required to submit a rule making fee in addition to the fee required for the application to effectuate the change in community of license to Haven, Kansas, at the time its Form 301 application is submitted.

9. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. §801(a)(1)(A).

10. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

⁸ Stations KWBW(AM), KHCC-FM, KZSN(FM) and KHUT(FM) would remain licensed to Hutchinson. Moreover, Petitioner is the permittee of Station KJKC(FM), Channel 240A at Hutchinson, Kansas.

11. For further information concerning the above, contact Sharon P. McDonald, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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